had not asked themselves the right question; and that they took into account matters that they had no right to take into account. Because of all this, it was argued that they had made an error of law which affected their jurisdiction, and accordingly it was within the power of the learned judge to quash their award by *certiorari* proceedings.

With respect we do not agree.

What was the question before the Industrial Court?

It will be observed that the Minister's letter to the President of the Industrial Court was in general terms and did not specify the questions on which a decision of the Industrial Court was required — as has to be done in India.

In their written statement of case before the Industrial Court the union contended that the purported retrenchment was not *bona fide* and that the company had breached the rule "last in, first out".

In their written statement in reply to the Industrial Court, the company denied that the retrenchment was not *bona fide*, contended that in respect of the first and third employees they had followed the rule "last in, first out", that in respect of the second they were justified in retrenching her, and prayed that the court uphold the retrenchment.

Thus the question before the Industrial Court was a straightforward one: was the retrenchment *bona fide* or not?

The Industrial Court recognized that retrenchment was a matter for management. Management sought to justify it on the ground of economics, that turnover and profits were down, and in view of expenses at head office in Amsterdam, expenses on office maintenance, and bad debts, they had to reduce staff, and they had no alternative but to retrench the three employees.

In the event the Industrial Court came to the conclusion that the "retrenchment exercise was ... in the circumstances not proper".

In doing so, we think that the Industrial Court had applied their mind to the proper question for the purpose of making their award; and had not asked themselves the wrong questions and taken into account matters which they should not have taken into account. Accordingly, in our judgment, they had not made an error of law which affected their jurisdiction, and therefore their award could not have been quashed by *certiorari* proceedings.

For the above reasons, we would allow the appeal, set aside the order of the learned judge, and restore the award of the Industrial Court.

The company to pay costs here and below.

Appeal allowed.

Solicitors: *D.P. Xavier & Co.; Lewis & Co.*

SUM KUM SENG v. PUBLIC PROSECUTOR

[F.C. (Suffian L.P., Chang Min Tat & Abdul Hamid F.JJ.) December 9, 1980 & January 15, 1981]

[Kuala Lumpur — Federal Court Criminal Appeal No. 36 of 1980]

Criminal Law and Procedure — Charge of having under control fire arms — Accused admitting burying weapons and offering to show place to police — Admissibility of evidence — No evidence of actual words used by accused — Evidence in indirect speech — Evidence Act, 1950, s. 27 — Internal Security Act, s. 57(1).

Evidence — Charge of having under control fire arms — Accused admitting burying weapons and offering to show place to police — No evidence of actual words used by accused — Evidence in indirect speech — Admissibility — Evidence Act, 1950, s. 27.

In this case the appellant had been tried and convicted of the offence of having under his control fire arms. At the trial the prosecution relied on the evidence that the appellant after his arrest and interrogation had admitted burying the weapons somewhere and had offered to show the place to the police. It was argued that the evidence was inadmissible under section 27 of the Evidence Act, 1950, as it was not in the actual words used by the appellant.

Held: the statement of the appellant to the police officer that he "admitted burying the weapons and offered to show me the place" was the information supplied by the appellant that had been the cause of the proven discovery. The fact that the information was told by the police officer in the trial court in substance does not *per se* make it inadmissible, all the more so, when, as it so clearly appeared in this case, it was only in indirect speech and it was so close to the direct that there was no apparent difference.

Case referred to:-

(1) *Queen* v. *Murugan Ramasamy* [1965] A.C. 1.

The following cases were also cited in argument: *Public Prosecutor* v. *Venkata Reddi* A.I.R. 1945 Mad. 202; Chong *Soon Koy* v. *Public Prosecutor* [1977] 2 M.L.J. 78.

FEDERAL COURT.

Karpal Singh (*Y.N. Ngeow* with him) for the appellant.

Mohamed Shafee bin Abdullah (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Chang Min Tat F.J. (delivering the judgment of the Court): The appellant was tried and convicted on a charge under section 57(1)(a) Internal Security Act No. 82, of having under his control, without lawful excuse, literally, an arsenal — some 16 firearms of various types, all previously stolen in a daring raid on the Police Station at Peranang.

He had been arrested in connection with some other investigation and, in the usual manner, he was subjected to a series of interrogation. The interrogation was in this instance conducted by an officer who was not without some knowledge of psychology. This officer spent the first two sessions on reaching a measure of rapport with the accused and it was only at the third session that, in his words as recorded by the trial judge, "the accused admitted burying weapons somewhere and offered to show me the place."

In the events that happened, the officer promptly informed his superior officer, a police party was mounted, and with the accused, it went to the accused's fruit plantation at Kampong Gebok where he pointed at five spots on the ground — one at a time. From

these spots, the police in the presence of the accused recovered all the weapons listed in the charge.

The prosecution at the trial relied almost entirely on this evidence and it was on this evidence that the accused was convicted. The defence, both at the trial and before us, was that having regard to the provisions of section 27 of the Evidence Act, 1950, which reads as follows:

"27. When any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so much of that information, whether the information amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved."

the evidence that the accused had admitted burying the weapons should not have been let in, since in contravention of the provisions of section 27, it was not in the actual words used by the accused.

This is a very narrow point. Counsel for the appellant did not, perhaps because he could not, contest the fact that the weapons in the charge were recovered as a result of information given by the accused. Clearly not only the fact of discovery but also so much of the information as led to the discovery was admissible. The trial judge relied, in our view and, with respect, correctly, on the following passage from the judgment of the Privy Council in *The Queen* v. *Murugan Ramasamy*[1] at page 14 on appeal from the Supreme Court of Ceylon (now Sri Lanka) on a parallel provision of the law, section 27 of the Evidence Act:

"There can be no doubt as to what is the general purpose of sections 25 and 26. It is to recognise the dangers of giving credence to self-incriminating statements made to policemen or made while in police custody, not necessarily because of suspicion that improper pressure may have been brought to bear for the purpose of securing convictions. Police authority itself, however carefully controlled, carries a menace to those brought suddenly under its shadow; and those two sections recognise and provide against the danger of such persons making incriminating confessions with the intention of placating authority and without regard to the truth of what they are saying.

Section 27, on the contrary, envisages a situation in which circumstances themselves vouch for the truth of certain statements made by an accused person, even though they are made in conditions that would otherwise justify suspicion. These are those statements that have led to the actual discovery of a proven fact when the information supplied by the accused has been the cause of the discovery."

It is clear and beyond argument that the statement of the accused in this case that "he admitted burying weapons somewhere and offered to show me the place" was the information supplied by the accused that had been the cause of the proven discovery. It was a statement that was clearly admissible, unless it offended against some other statutory provision that would bar its admission.

Counsel for the appellant suggested that it was not admissible because it was not in the actual words used by the accused. In his submission, the paraphrase of the actual statement of the accused was fatal. In support of this submission, he read some lengthy passages from a number of authorities, which we, however, do not need to reproduce since he admitted that he found all of them in the following passage taken from *Sarkar* on The Law of Evidence, 12th Edition, at page 304:

"Statements made by accused to police officers which are or may be provable under section 27 should be clearly and carefully recorded. *They should be recorded in the first person, that is to say, as far as possible in the actual words of the accused.* They should not be paraphrased (*In re Athappa Goundan*, 1937 Mad. 695: A1937 M 618; *In re Ramamurthy*, A1941 M 290; *Naresh* v. *R.*, 46 C.W.N. 180: 1942, 1 Cal. 436; *Pub Pros* v. *Pasala*, A1945 M 202; *Pub Pro* v. *Venkoba*, 1937 M.W.N. 73; *Chenna* v. *R.*, A1940 M 710; *Gaya Pd* v. *S.*, A1957 A 459; *Nathu* v. *S.*, A1958 A 467). No judge should allow one word more to be deposed to by the police than is absolutely necessary to show how the fact discovered is connected with the accused (*R.* v. *Babulal*, sup.; *R.* v. *Adu Shikdar*, 11 C 635, 641)."

Emphasis supplied. With the greatest of respect, we are unable to read in this passage or to see in the several judgments mentioned therein which had been read to us, anything founding the proposition of counsel for the appellant. The fact that the information was told the trial court in substance does not, *per se*, make it admissible. All the more so, when, as it so clearly appears in this case, it was only in indirect speech and it was so close to the direct that there was no apparent difference. "The accused admitted burying weapons somewhere and offered to show me the place" is but an indirect rendering and not a paraphrase or a substitution of "I have buried weapons somewhere and I can show you the place."

This means that the attack on the admissibility of the evidence which so completely inculpates the appellant is entirely without foundation and the appeal must be dismissed.

But before leaving this appeal we should express our clear view that while there is no strict necessity at law to give the actual words used by an accused person in supplying the information that led to the discovery of a fact or thing and comes within the provisions of section 27, both the decisions referred to and commonsense stress the desirability that the actual words be recorded somewhere. The record is also as much for the protection of the particular officer concerned, be he the investigating or the interrogating officer, as for the purpose of determining its admissibility. We believe all police officers carry note books with them and we see no practical difficulty of any kind hindering any officer interrogating an accused person from jotting in his note book such a vital piece of information, on which the whole case against the accused may depend. It would not take him more than a minute or so. Ideally it should be done at the moment it was made. We appreciate that the immediate concern of the police is to recover the subject-matter of the information but we fail to see how a delay of a minute or so can make any material difference. Afterwards, the officer can refer to this note as the actual information given by the accused leading to the discovery of the fact. The note may, of course, be made afterwards but as we have said, we can see no reason why it should not have been made at the time the information was given and why the police officer should forego the value of a contemporaneous record which goes so far to establish his credit as a truthful witness. So far as the trial court is concerned, it ought to be realised by all concerned, particularly by the prosecution, that the court has a clear duty to admit under section 27 only that part of the evidence which falls squarely

within the provision of a statement leading to the discovery of a fact and that it would be immensely assisted in its task if the prosecution were strictly careful to limit the evidence to the actual statement given.

Order accordingly.

Solicitors: *Ngeow & Co.*

PUBLIC PROSECUTOR v. LEONG KUAI HONG

[F.C. (Suffian L.P., Chang Min Tat & Abdul Hamid F.JJ.) December 9, 1980 & January 20, 1981]

[Kuala Lumpur — Federal Court Criminal Appeal No. 28 of 1980]

Criminal Law & Procedure — Charge of being in control of hand grenades — Hand grenades not containing explosives — Whether ammunition — Internal Security Act, 1960, s. 2.

Internal Security — Ammunition — Explained — Internal Security Act, 1960, s. 2.

Interpretation of Statutes — Penal Statute — To be construed strictly.

The respondent had been acquitted by the learned trial judge as he held that the two home-made hand grenades proved to have been in the custody of the respondent were not ammunition within section 2 of the Internal Security Act, 1960. The hand grenades did not contain any explosive but they had four parts, namely, striker, percussion cap, safety fuse and detonator. The Public Prosecutor appealed.

Held: as the hand grenades were devoid of any explosive substance they did not come within the definition of ammunition and the learned trial judge was correct in acquitting the respondent.

Cases referred to:-

(1) *Ismail bin Haji Ibrahim* v. *Public Prosecutor* [1949] M.L.J. 139.

(2) *Chong Kim Seng* v. *Public Prosecutor* [1949] M.L.J. 109.

(3) *Liew Sai Wah* v. *Public Prosecutor* [1968] 2 M.L.J. 1.

(4) *L.N.E.R. Co.* v. *Berriman* [1946] A.C. 278.

FEDERAL COURT.

Lamin bin Haji Mohamed Yunus (Deputy Public Prosecutor) for the appellant.

Karpal Singh (*Y.N. Ngeow* with him) for the respondent.

Cur. Adv. Vult.

Suffian L.P. (delivering the judgment of the Court): The main issue in this appeal is whether or not the two home-made hand grenades proved to have been in the control of the respondent contrary to section 57(1)(b) of the Internal Security Act, 1960 ("the Act") were ammunition within section 2 of the Act.

The learned trial judge decided that they were not and acquitted and discharged the respondent, and the learned Public Prosecutor appeals from that decision.

Staff Sergeant Duraisingam of the Second Engineers Squadron who was in charge of booby traps and engineering works, with others from the Bomb Disposal Unit, went to the scene to retrieve and neutralize the grenades. In evidence he said that the grenades, which were home-made, could not explode as they did not contain explosive, but that he still called them hand grenades because they had four parts, namely striker, percussion cap, safety fuse and detonator.

There was no definite finding by the learned trial judge as to whether or not the grenades had these four parts, though he did mention them in his judgment; but as there was no cross-examination on them, it may be taken as a fact that they did have them.

Ammunition is defined by section 2 of the Act as meaning three things, as is clear if the definition is re-arranged as follows:

(a) it means ammunition for any fire-arm as hereinafter defined;

(b) it includes grenades, bombs and other like missiles whether capable of use with such a fire-arm or not; and

(c) it includes any ammunition [including grenades] containing or designed or adapted to contain any noxious liquid, gas or other thing.

It will be noted that the definition does *not* refer to component parts of the objects therein — in contrast to the definition of fire-arm in the same section. That definition reads:

"fire-arm means any lethal barrelled weapon of any description etc. . . . , and *includes any component part* of any such weapon as aforesaid."

That definition is identical with the definition of the same word in the Emergency Regulations, 1948; and our predecessor, the Court of Appeal, indicated in *Ismail bin Haji Ibrahim* v. *Public Prosecutor*[1] in what circumstances a person may be found guilty of carrying a fire-arm contrary to regulation 4(1)(a) of the regulations, though he carried only parts thereof.

The definition of ammunition may also be contrasted with the definition of explosive as meaning, *inter alia,* any apparatus, machine, implement or material used for causing any explosition *and "any part* of any such apparatus, machine or implement."

The instant case was tried under the Essential (Security Cases) Regulations, 1975, P.U.(A) 320 of 1975, as amended by P.U.(A) 362 of the same year; and regulation 21(6) thereof again provides that a fire-arm and explosive include any component part thereof. Regulation 21(6) reads:

"In a security case in which firearm or explosive is the subject matter of the charge or was used in the commission of the offence, such firearm or explosive shall be deemed at the time of the offence to have been in serviceable condition or otherwise capable of being used for the purpose for which such firearm or explosive is designed; and for the purpose of this regulation, a firearm or explosive *includes any component part* thereof."

Be it noted there is no provision in this regulation — made as recently as 1975 — that a grenade includes its component parts.

In our judgment, the contrast between the definition of ammunition on the one hand and of fire-arm and explosive on the other, points to a clear intention on the part of the legislature that in the case of a grenade there must be proof that it must be a complete grenade and that it must at any rate contain explosive, in which event it is unnecessary to prove